

APR 01 2018

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

V.

Gerardo ESPINOSA

CRIMINAL COMPLAINT

Case Number: 2:18mj385

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. On or about March 30, 2018 in Brooks County, in the (Date)
 Southern District of Texas defendant, Gerardo ESPINOSA

did knowingly or in a reckless disregard of the fact that an alien had come to, entered, or remained in the United States in violation of law, transport, or move or attempt to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law

In violation of Title 8 United States Code, Section(s) 1324.
 I further state that I am a(n) Border Patrol Agent and that this complaint is based on the following facts:

See Attached Affidavit of U.S. Border Patrol Agent

Eugenio Garza

Continued on the attached sheet and made a part of this complaint:

 Yes No

Signature of Complainant

Eugenio Garza

Printed Name of Complainant

Submitted by reliable electronic means, sworn to, signature attested telephonically per Fed.R.Crim.P.4.1, and probable cause found on the:

at

Corpus Christi, Texas

City and State

Signature of Judicial Officer

April 1, 2018 at 10:50am
DateB. Janice Ellington U.S. Magistrate Judge

Name and Title of Judicial Officer

AFFIDAVIT

The information contained in this report/affidavit is based upon my personal participation in the investigation, which included, but is not limited to information relayed to me by other agents and officers participating in the investigation.

FACTS/PROBABLE CAUSE:

On March 30, 2018 at approximately 9:10 p.m. Border Patrol Agent L. Gonzalez encountered Gerardo ESPINOSA as the driver of a white Ford pickup truck at the Falfurrias, Texas Border Patrol Checkpoint.

Once the vehicle arrived at the primary inspection area of the checkpoint, ESPINOSA was asked by Border Patrol Agent Gonzalez if he was United States citizen and ESPINOSA replied "Florida." BPA Gonzalez asked the passenger in the vehicle, a 17 year old juvenile, if he was a United States citizen and he provided documentation showing that he was.

BPA Gonzalez then asked ESPINOSA if he had any form of identification and he replied that he never had one before. ESPINOSA was asked where he was going and if the vehicle belonged to him. ESPINOSA stated that he was going to Premont, Texas to work in construction and that the vehicle belonged to his uncle.

While Agent Gonzalez was questioning ESPINOSA, Agent D. Garza advised BPA Gonzalez that he could see what appeared to be human hair and skin through an opening located on the top side of a toolbox in the bed of the truck. BPA Gonzalez then informed BPA canine handler Nguyen of what he thought was inside the toolbox so BPA Nguyen used his service canine to conduct a free air sniff of the vehicle. BPA Nguyen informed BPA Gonzalez that his service canine alerted to the vehicle and the vehicle was sent to the secondary inspection area for further inspection.

Once in the secondary inspection area, ESPINOSA and his passenger were asked to exit the vehicle and were escorted into the checkpoint. BPA Nguyen conducted a systematic search of the vehicle resulting in a canine alert to the toolbox in the bed of the truck. Agents pried open the lid and discovered two subjects being concealed in the toolbox. Agents determined that these two subjects, later identified as Edwin MENJIVAR-Tovar and Erbin LUX-Quinillo, were citizens and nationals of El Salvador and Guatemala currently in the United States illegally. At this time all subjects were placed under arrest.

MIRANDA RIGHTS OF DEFENDANT: Gerardo ESPINOSA

ESPINOSA was read his Miranda Rights and Warnings and asked if he understood his rights. ESPINOSA informed agents that he understood his rights and was not willing to provide a statement without a lawyer present.

The juvenile passenger was also read his Miranda Rights and Warnings and asked if he understood his rights. This subject also stated that he understood his rights but was not willing to make a statement without a lawyer present.

MATERIAL WITNESS MIRANDA RIGHTS AND STATEMENTS

Edwin MENJIVAR-Tovar and Erbin LUX-Quinillo were read their Miranda Rights and Warnings and asked if they understood their rights. Both subjects informed agents that they understood their rights. LUX agreed to provide a statement without an attorney present. MENJIVAR was not willing to provide a statement at this time.

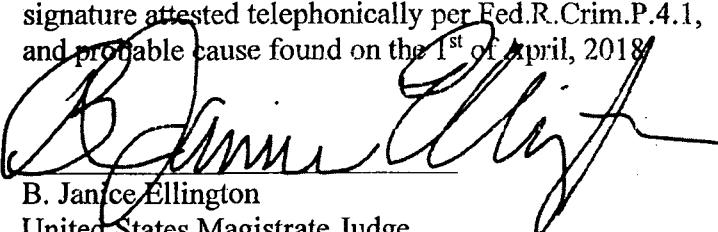
LUX stated after crossing into the United States illegally, he was eventually taken to a stash house in McAllen, Texas where he waited with two other subjects that he crossed the river with. LUX stated on the night of the smuggling attempt, he and the other two subjects were picked up and taken to a gas station in an unknown location. LUX stated there was an unknown man waiting next to a truck parked at this location. LUX stated the unknown man yelled-at them-to get into the toolbox on the truck. LUX stated he was the first person to get inside the toolbox and one more person got inside after him. LUX stated after the second subject got inside the toolbox, the unknown man slammed the lid of the toolbox shut. LUX stated he was very hot inside the toolbox and that they had no food or water inside the box with them. LUX stated that he did not see the driver of the truck and that the truck did not make any stops between leaving the gas station and arriving at the checkpoint.

DISPOSITION

The facts of this case were presented to Assistant United States Attorney Jon Muschenheim, who accepted prosecution on Gerardo ESPINOSA for violating Title 8 USC 1324, alien smuggling. Edwin MENJIVAR-Tovar and Erbin LUX-Quinillo were held as material witnesses. Prosecution was not sought on the juvenile passenger in the vehicle.


Eugenio Garza
Border Patrol Agent

Submitted by reliable electronic means, sworn to,
signature attested telephonically per Fed.R.Crim.P.4.1,
and probable cause found on the 1st of April, 2018


B. Janice Ellington
United States Magistrate Judge